

Neifeld Docket No: OCLP-3-LAOR-US

Application/Patent No: 09/595,677

USPTO CONFIRMATION NO: 3948

File/Issue Date: 6/19/2000

Inventor/title: LAOR/Method of and System for Managing Promotions for Purchase
Transactions Over a Network

Examiner/ArtUnit: VAN BRAMER/3622

**37 CFR 1.7(c) FILING RECEIPT AND TRANSMITTAL LETTER WITH
AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

1. **THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FEES
WHICH MAY BE REQUIRED, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT
ACCOUNT NUMBER 50-2106.**

2. **FEES (PAID HEREWITH BY EFS CREDIT CARD SUBMISSION) \$: 1,640**

A. CLAIMS FEES

\$ - (claims previously paid for; currently present; \$50 per addl. claim over 20.)

\$ - (independent previously paid for; currently present; \$200 per addl. claim over 3)

B. OTHER FEES

Fee for issue: \$1,440

Fee for Applying for Patent Term Adjustment: \$200

3. **THE FOLLOWING DOCUMENTS ARE SUBMITTED HEREWITH:**

37 CFR 1.705 Application for Patent Term Adjustment (4 pages)

Exhibit 1

Part B - Fee(s) Transmittal (1 page)

4. **FOR INTERNAL NEIFELD IP LAW, PC USE ONLY**

USPTO CHARGES: \$1,640	FIRM CHARGES: \$300
CLIENT BILLING MATTER: OCLP-3-LAOR	DESCRIPTION: OCLP-3-LAOR-US
BANK ACCOUNT/Check:6/488	FIRM CHARGE FOR paying a gov. fee
G/L ACCOUNT: 5010	for issue.
	LAWYER: BTM

INITIALS OF PERSON WHO **ENTERED** ACCOUNTING DATA: BTM

ATTORNEY SIGNATURE (AUTHORIZING DEPOSIT ACCOUNT)

DATE: 10-29-2008

SIGNATURE: /RichardNeifeld#35,299/

Richard Neifeld

Printed: October 29, 2008 (11:02am)

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ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22313

37 CFR 1.705 APPLICATION FOR PATENT TERM ADJUSTMENT

I. Statement of the Precise Relief Requested

The patentee requests that the Director change the notice of term extension under 35 USC 154(b) to 1865 days. The USPTO noted only 1692 days in its determination of patent term adjustment mailed 9/18/2008. The difference of 173 days results from the omission of the time in excess of three years from the filing of the application (June 19, 2000) until the filing of a request for continued examination (December 9, 2003).

II. Material Facts in Support of the Petition

1. The Director determined a 1692 day patent term extension, as noted on the determination of patent term adjustment mailed September 18, 2008.
2. On June 19, 2000, the applicant filed this application.
3. On February 12, 2003, the USPTO mailed a non-final rejection.
4. On June 12, 2003, the applicant was granted a 31 day extension of time to respond to an office action
5. On December 9, 2003, the applicant filed a request for continued examination.
6. On November 22, 2005, the USPTO mailed a non-final rejection.
7. On March 22, 2006, the applicant was granted a 28 day extension of time to

respond to an office action

8. On September 14, 2006, the applicant filed a notice of appeal.
9. On May 22, 2008, the USPTO mailed a BPAI decision on appeal reversing the examiner.

III. Reasons Why the Relief Requested Should be Granted

The term extension applicable under the 35 USC 154 is calculated as follows:

A. 35 USC 154(b)(1)(A) - GUARANTEE OF PROMPT PATENT AND TRADEMARK OFFICE RESPONSES

1. 35 USC 154(b)(1)(A)(i) provides that the term of the patent shall be extended 1 day for each day that the PTO fails to respond to a reply under section 111(a) within 14 months after the date on which the application was filed.

2. On June 19, 2000, the applicant filed this application. On February 12, 2003, the USPTO mailed a non-final rejection. The difference between these dates, less the permitted fourteen months, is 542 days.

3. On December 9, 2003, the applicant filed a request for continued examination. On November 22, 2005, the USPTO mailed a non-final rejection. The difference between these dates, less the permitted four months, is 592 days.

B. 35 USC 154(b)(1)(B) - GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY

4. 35 USC 154(b)(1)(B)(i) provides that the term of the patent shall be extended 1 day for each day in excess of three years from the application filing date that the PTO fails to issue an original patent, not including any time consumed by continued examination of the application requested by the applicant under section 132(b).

5. On June 19, 2000, the applicant filed this application. On December 9, 2003, the applicant filed a request for continued examination. The difference between these dates is 173 days. This period of PTO delay, from June 19, 2003 until December 9, 2003, does not overlap with any other period of PTO delay. Therefore, consistent with the holding in *Wyeth v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008), the applicant is entitled to these 173 days.

C. 35 USC 154(b)(1)(C) - GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO INTERFERENCES, SECRECY ORDERS, AND APPEALS

6. 35 USC 154(b)(1)(C)(iii)/37 CFR 1.703(e) provides that the term of the patent shall be extended 1 day for each day under appellate review, from the date of filing a notice of appeal to the date of a decision reversing an adverse determination of patentability of any claim.

7. On September 14, 2006, the applicant filed a notice of appeal. On May 22, 2008, the USPTO mailed a BPAI decision on appeal reversing the examiner. The difference between these dates is 617.

8. The total PTA for PTO delay is 1924 days.

D. 35 USC 154(b)(2) -REDUCTION OF PERIOD OF ADJUSTMENT FOR APPLICANT DELAY

1. On June 12, 2003, the applicant was granted a 31 day extension of time to respond to an office action.

2. On March 22, 2006, the applicant was granted a 28 day extension of time to respond to an office action.

3. The total reduction in PTA for applicant delay is 59 days.

IV. Conclusion

The net patent term adjustment is 1865 days. The Director should grant the petition to change the notice of term extension under 35 USC 154(b) from 1692 days to 1865 days.

V. Fee under 37 CFR 1.18(e)

An EFS credit card authorization in the amount of \$200 is submitted herewith to cover the fee for filing an application for the patent term adjustment.

VI. List of Exhibits

Exhibit 1: A copy of the USPTO web site's PAIR Transaction History tab printout for United States Patent Application Number 09/595,677 showing the dates recorded by the USPTO for filing and mailing of papers in this application.

Date 10-28-2008

Respectfully submitted,
/RichardNeifeld#35,299/
Richard A. Neifeld, Ph.D.
Registration No: 35,299
Attorney of Record

Printed: October 29, 2008 (11:02am)

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